

REMARKS

This responds to the Restriction Requirement dated November 27, 2007.

In the Office Action, claims 16-48 are noted as pending in the application, and they are subject to an election of Species. It is understood that the previous claim amendments were entered.

Claim 16 is amended to specify the viscosity/texture modifiers at the recited concentrations. The recited components in the group are found in the Examples and have been identified throughout the application as viscosity/texture modifiers. No new matter is added.

Election

In response to the requirement of an election even with traverse, Applicant elects Species I, namely aqueous based compositions. The claims directed to aqueous compositions are claims 16, 17, 19-33, 35, 39-41, and 44-48. Claims 16, 22, 26, 33 and 39 are generic.

Amendment of January 12, 2007

According to the Office Action,

“the amendment filed 1/12/07 has been found to be non-compliant.

The amendment directs the PTO to replace sections of the specification, referring to these sections by paragraph number.

However, the specification, as originally filed, does not contain paragraph numbers; only page numbers.”

The Office Action requires correction. Applicant respectfully traverses the requirement for correction.

First, as to forms of amendments to applications permitted under the rules and according to Patent Office practice, MPEP Section 714 permits amendments by identifying paragraph numbers:

“In order to delete, replace or add a paragraph to the specification of an application, the amendment must unambiguously identify the paragraph to

be modified either by paragraph number (see MPEP § 608.01), page and line, or any other unambiguous method and be accompanied by any replacement or new paragraph(s). Replacement paragraphs must include markings to show the changes.”

37 C.F.R. Section 1.121; and MPEP Section 714, Part II.B. (emphasis added).

Therefore, the amendments were compliant with the rules and the Office practice.

However, to ensure clarity in making the amendments, the previous amendments are presented again reciting both the original application text by page and line number, and also by paragraph number corresponding to the application as published.

The headings in the amendment, namely those being added to the Tables, come from the original application as filed. See, for example, the text of the specification as originally filed, pages 11-28. Exhibit A is a PDF file showing the pages 11-28 of the application as originally filed, with the amended text enclosed in red ovals. The pages were taken from the Patent Office PAIR document and the red ovals were added to show the source of the amended headings. The headings were in the application pages as originally filed. Therefore, the present and the previous amendments to the specification do not add new matter.

Meaning of the Tables on Pages 11-27

In the Office Action, the Specification is noted in the following passage:

“It is noted that originally filed pages 11-27 did not contain any clarifying text as to what the tables, found on those pages, are intended to represent. For example, it is not clear whether these tables represent just lists of potential ingredients, compositions directed to the inventions, or compositions of prior art comparative compositions. For example, what does the table represent on page 11 of the specification - or for that matter, any of the tables? It is not seen that the rest of the specification helps in deciphering what information these tables are intended to convey.”

Applicant appreciates the notations regarding the amendments and other parts of the Specification. As noted in the paragraphs above, the Tables are directed to Examples (i.e. Examples 1-19), and to ranges for the components in three classes of compositions, namely ranges for Lipids, ranges for Aqueous solutions with Alcohol and ranges for Aqueous solutions without Alcohol. Clearly there is no suggestion that these Tables relate to prior art in any way, and it is not clear to Applicant what would be a list of "potential ingredients" outside the discussion of the examples under the heading Summary of the Invention and under the heading Detailed Description.

Applicant respectfully notes that throughout the specification, the Examples are described with details found in the tables. See for example, paragraphs 14-17, 34 and 37 of the published application. Also, the originally filed pages of the specification included the designations that should have been included in the published application, namely the ranges for lipid, alcohol/aqueous and non-alcohol aqueous compositions and the Examples gave specific concentrations of ingredients.

New Matter

According to the Office Action,

"the non-compliant amendment does add additional text, not present in the originally filed specification. However, applicant's justification for these newly added captions (i.e., p15 of communication received 1/12/07), is not seen to be adequate. What does in the page "margins" mean? In the next response, applicant should consider adding justification for all of the newly presented text to avoid the issue of New Matter."

The text set forth in the amendments is not new matter as the text was included in the application as originally filed. As is seen in the images on PAIR, some copies of which are attached hereto as Exhibit A, the text is clearly seen immediately above the tables to which they correspond. Applicant simply asks that the text of the specification as originally filed be reflected in the specification as published and as printed in any printed

patent. Applicants are not required to justify correction of Patent Office errors. There is no disputing that the text was present in the specification as filed, and Applicant is unaware of any requirement for justifying a request that the published specification be complete and in the form as originally filed.

It is noted that the phrase “in the margins” was merely a descriptive phrase for describing to Patent Office personnel where the original text could be found in the context of where the Patent Office seemed to define the text and the margins of the application document as originally filed.

Perceived Inconsistency in Surfactant and Alcohol

According to the Office Action:

“applicant should consider what appears to be inconsistencies in the specification/claims. For example, claim 18 recites that the surfactant is alcohol, yet claim 34 distinguishes between the composition having both a surfactant and an alcohol. Is the alcohol a surfactant, or functioning as one, or isn't it? Clarification and/or correction is suggested. Similarly, it is not clear what the function of the oils is in the composition nor is it clear why claims, such as claim 16, recite both a liquid sweetener and a viscosity/texture modifier when the specification discloses that the viscosity/texture modifier is selected from the group consisting of, consumable sugars, syrups and/or gums. That is, as disclosed, the viscosity/texture modifier is a liquid sweetener.”

It is noted that claims 18 and 34 are withdrawn from consideration as being directed to non-elected claims. Claim 16 has been amended to clarify the viscosity/texture modifier recited at the recited concentrations.

Application No.: 10/807,947

Amendment dated: December 27, 2007

Reply to Restriction Requirement of: November 27, 2007

Atty. Ref.: 501120-015

Please charge any additional fees that may be due or credit any overpayments to our deposit Account No. 50-0655. If a petition is required in conjunction with this paper, please consider this a request for such a petition.

Respectfully submitted,

Dated: December 27, 2007

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